

AG Contract No. KR04-0457TRN  
ADOT ECS File No. JPA 03-64  
TRACS No.: ~~H5106-01-TBD~~ 14668801C  
Section: Airport Road TI (JW Powell Blvd Delay)  
East Flagstaff TI Improvements (Route Transfer  
of Specified State routes within the Flagstaff City  
limits)  
BUDGET SOURCE Item No.: ~~TBD~~ 22505

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF FLAGSTAFF

THIS AGREEMENT is entered into the 20th of August., 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954 as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF FLAGSTAFF, acting by and through its MAYOR and CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 9-240 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. The State and City desire to participate in a joint effort of two projects located within the City to include the following: a ) The East Flagstaff Traffic Interchange (TI); and, b) Transfer of portions of State routes (identified herein) to the City, for the safety and benefit of the traveling public. The purpose of this agreement is to set forth the responsibilities of the parties hereto.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

---

NO. 27017  
Filed with the Secretary of State  
Date Filed: 08/20/04

Janice K. Brewer  
Secretary of State

By: Timothy D. Greenewald

## **II. SCOPE OF WORK**

1. The State and the City agree it is in the best interest of the parties herein:

a. To delete the improvement project named Airport Road TI, identified in the State's Fiscal Year (FY) 2004-2008 5-Year Construction Program as J.W. Powell Boulevard, (Item Number 12405 in FY 05), and replace it with a new project named East Flagstaff TI, identified in the State's FY 2004-2008 5-Year Construction Program for FY 05.

b. The State to recommend to the State's Transportation Board, the reprogramming of the J.W. Powell Boulevard project for construction, during the next State Transportation Facilities Construction Programming Cycle, FY 2005-2009.

c. The State to recommend to the State's Transportation Board, the State fully fund the construction of the East Flagstaff TI improvements at an estimated cost of \$20,000,000.00.

d. The City to be the lead agency for the design, construction, construction contingencies and construction administration of a pavement preservation project on Frontage Road 40 (F-40) (MP) 200.54 to (MP) 203.72, hereinafter referred to as the "Project", within the City.

2. The State will:

a. Upon execution of this agreement, filing with the Secretary of State and within thirty (30) days after receipt and approval of an invoice, remit to the City the total amount, not to exceed \$2,000,000 the State's total lump sum participation for the design, construction, construction contingencies and administration of the Project improvements, to be done by the City on F-40 (MP) 200.54 to (MP) 203.72, as shown on Exhibit A. Funding for the Project will be available in FY 2005, upon approval by Resolution of the State Transportation Board.

b. Agree the City shall be the lead agency of the Project and upon execution of this agreement, approval by Resolution of the State Transportation Board, and following the transfer of funds as shown in II 2 a. herein, on or about July 1, 2004 abandon in its entirety all aspects of rights of way to the City, including appurtenant easements, existing structures and traffic signals, for the following State routes within the City of Flagstaff: (with the exception of the segments shown in II , 2 , c , below)

B-40 (MP) 199.72 to (MP) 200.71  
F-40 (MP) 199.96 to (MP) 204.22  
US 89 (MP) 418.74 to (MP) 420.33

For a total of 6.84 miles, shown on Exhibit A

c. Temporarily retain ownership jurisdiction and maintenance responsibilities for the following State routes within the City of Flagstaff until completion of the East Flagstaff TI construction (ADOT final acceptance), at which time the State will abandon, by an additional Resolution of the State Transportation Board, the remaining segments described below to the City of Flagstaff:

B-40 (MP) 199.72 to (MP) 200.71  
F-40 (MP) 199.96 to (MP) 200.54  
US 89 (MP) 418.74 to (MP) 419.11

3. The City will:

- a. Waive the requirements of Arizona Revised Statutes Section 28-7209
- b. Within thirty (30) days of the execution of this agreement and filing with the Secretary of State, invoice the State the total lump sum amount not to exceed \$2,000,000 for State's total lump sum participation for the design, construction, construction contingencies and administration, the State's total participation of the Project improvements, to be done by the City on F-40 (MP) 200.54 to (MP) 203.72, shown on Exhibit A.
- c. Provide design plans, specifications and such other documents and services required for construction bidding and construction of the Project.
- d. Upon execution of this agreement, approval by resolution of the State Transportation Board, and receipt of the funds identified in II.2.a. herein, on or about July 1, 2004 accept, in its entirety all aspects of rights of way from the State, including appurtenant easements, existing structures and traffic signals, for the following State routes within the City of Flagstaff: (with the exception of the segments shown in II, 2., c., below)

B-40 (MP) 199.72 to (MP) 200.71  
F-40 (MP) 199.96 to (MP) 204.22  
US 89 (MP) 418.74 to (MP) 420.33

For a total of 6.84 miles, shown on Exhibit A.

- e. Agree the State shall temporarily retain ownership jurisdiction and maintenance responsibilities for the following State routes within the City of Flagstaff until completion of the East Flagstaff TI construction (ADOT final acceptance), at which time the City will accept from the State, through an additional Resolution of the State Transportation Board, the remaining segments described below:

B-40 (MP) 199.72 to (MP) 200.71  
F-40 (MP) 199.96 to (MP) 200.54  
US 89 (MP) 418.74 to (MP) 419.11

- f. Provide to the State a Temporary Construction Easement (TCE) for; all necessary City owned property needed for the State to construct the J.W. Powell Boulevard improvement project

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this agreement shall remain in force and effect until completion of all property donations by the City, Project payment identified in II.2.a. above, and the State's recommendations to and approvals by the State Transportation Board; provided, however, that this agreement, except any provisions for abandonment, which shall be perpetual, may be cancelled at any time upon thirty (30) days written notice to the other party, prior to the State's payments to the City, of the Project funds identified under this agreement

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage in connection with the subject matter of this agreement, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees, or volunteers

3. This agreement shall become effective upon filing with the Secretary of State
4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

7. **Non-Availability of Funds:** Every payment obligation of State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Contract

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602) 712-7424

City of Flagstaff  
City Manager  
211 West Aspen Avenue  
Flagstaff, AZ 86001-5399

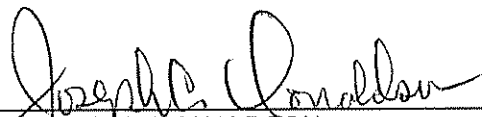
For Accounting

Arizona Department of Transportation  
Contract Accounting  
206 South 17 Avenue, Mail Drop 202B  
Phoenix, AZ 85007

10. In accordance with Arizona Revised Statutes Section 11-952, (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.


IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written

**CITY OF FLAGSTAFF**

By   
JOSEPH C. DONALDSON  
Mayor

By   
HARRY M. LANE  
Interim City Attorney

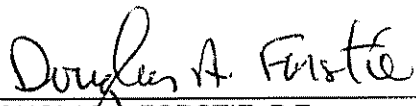
ATTEST

By   
MARGIE BROWN  
Acting City Clerk

**STATE OF ARIZONA**

Department of Transportation, Operations

Department of Transportation, Development

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer

By   
SAM MAROUFKHANI, P.E.  
Deputy State Engineer


**BUDGET SOURCE APPROVAL:**

By   
Fiscal Services Manager

### **CERTIFICATION**

I, Margie Brown, City Clerk of the City of Flagstaff, Arizona, do hereby certify that the attached is a full, true, and correct copy of Resolution No. 2004-48 adopted by the Flagstaff City Council at their Regular Meeting held June 1, 2004.

**IN WITNESS WHEREOF**, I have hereunto set my hand and impressed the official Seal of the City of Flagstaff, this 15th day of June, 2004.

  
CITY CLERK

(SEAL)

RESOLUTION NO. 2004-48

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA THROUGH THE DEPARTMENT OF TRANSPORTATION AND THE CITY OF FLAGSTAFF AUTHORIZING FUNDING OF CONSTRUCTION OF EAST FLAGSTAFF TRAFFIC INTERCHANGE IMPROVEMENTS AND TRANSFER OF 6.8 MILES OF STATE ROUTES TO THE CITY OF FLAGSTAFF

WHEREAS, the State of Arizona ("State") through the Arizona Department of Transportation ("ADOT") and the City of Flagstaff ("City") have negotiated and desire to enter into an Intergovernmental Agreement ("IGA") pursuant to which the State would fully fund the construction of the East Flagstaff Traffic Interchange ("East Flag TI") improvements at an estimated cost of \$20,000,000.00 and provide the City with \$2,000,000.00 of additional funding for the design, construction, construction contingencies and administration of Frontage Road 40 (F-40) improvements; and

WHEREAS, under the IGA the City would be the lead agency for the project; and

WHEREAS, under the IGA the State would abandon to the City State Routes B-40 (MP) 199.72 to (MP) 200.71; F-40 (MP) 199.96 to (MP) 204.22; US 89 (MP) 418.74 to (MP) 420.33 for a total of 6.84 miles following approval of the IGA and transfer of the above referenced \$2,000,000.00 to the City; and

WHEREAS, under the IGA the State would retain ownership during construction of the East Flag TI and then abandon to the City State Routes B-40 (MP) 199.72 to (MP) 200.71; F-40 (MP) 199.96 to (MP) 200.54; and US 89 (MP) 418.74 to (MP) 419.11 following completion and ADOT final acceptance of the East Flag TI construction; and

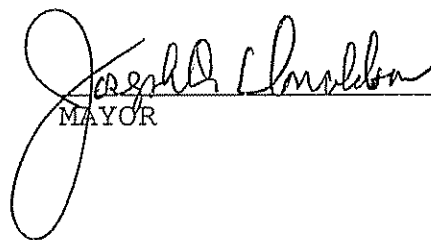
WHEREAS, the City Council has reviewed the proposed IGA and finds that it is in the best interests of the City to enter into the IGA with the State;

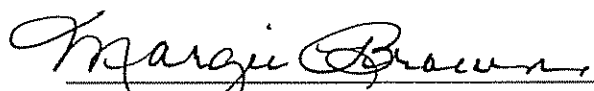
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Intergovernmental Agreement between the State and the City submitted as an attachment to the Staff Summary Report for the City Council meeting of June 1, 2004, be hereby approved and the Mayor be authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Flagstaff.

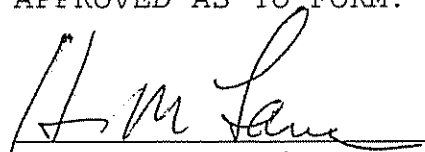
PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 1st day of June, 2004.

ATTEST:

  
MAYOR

  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY





TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TRANSPORTATION SECTION  
WRITER'S DIRECT NO: 602.542.8837

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0457-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 13 August 2004

Terry Goddard  
ATTORNEY GENERAL

A handwritten signature in black ink, reading "James R. Redpath". The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

James R. Redpath  
Assistant Attorney General  
Transportation Section

JRR:djd:780214